

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Teresa Little,

Complainant,

vs.

Lawrence Werner,

Respondent.

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DECISION  
AND FINAL ORDER

The above-entitled matter is now before Administrative Law Judge Allen E. Giles after issuance of FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER on March 19, 1998 ("Findings Order"). The Findings Order required the parties to submit additional information and argument regarding certain monetary damages.

Donald E. Horton and Laurie A. Cylkowski, Attorneys at Law, Horton and Associates, 9 Spruce Tree Centre, 1600 University Avenue West, St. Paul, Minnesota 55104, appeared on behalf of Complainant, Teresa Little.

Respondent Lawrence Werner, 774 East Country Club Drive, Benson, Arizona 85602, appeared Pro Se.

No further oral testimony is necessary; neither Party has requested a hearing, decisions on the matters at issue will be based on the additional information submitted by the Parties. For purposes of the decisions made herein, the record closed on May 18, 1998, the date of receipt of the Minnesota Department of Human Rights update of its hearing and litigation costs.

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this Order is the **final decision** in this case and under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

## STATEMENT OF ISSUES

What are the Minnesota Human Rights Department's hearing and litigation costs?

Whether Respondent has established financial hardship or financial inability to pay hearing and litigation costs or the civil penalty.

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. On March 19, 1998 the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ("Findings Order") was issued in this docket. The Findings Order concluded that Respondent violated the Minnesota Human Rights Act by committing unfair discriminatory practices in connection with the rental of real property. The Order directed that Respondent pay Complainant punitive damages and damages for mental anguish and suffering, pay Complainant's attorney's fees and a civil penalty.

2. The Findings Order directed the Parties to submit additional information and argument on damages and costs. Specifically, the Findings Order gave Respondent an opportunity to present any claims or argument regarding his financial ability to pay the civil penalty or hearing and litigation costs incurred by the Department of Human Rights. Findings Order at page 8.

3. In a letter dated April 13, 1998 the Department identified its hearing and litigation costs as \$4,432.20. Respondent was supplied a copy of that letter. On May 18, 1998, the Department of Human Rights updated and further affirmed its costs of \$4,432.20.

4. Respondent filed a letter dated April 17, 1998 in which he indicated he intended to appeal the final decision in this case. Respondent made no effort to establish that the civil penalty ordered in this proceeding or the hearing and litigation costs to be awarded in this proceeding would result in financial hardship or that he would have a financial inability to pay either the civil penalty or the hearing and litigation costs.

5. Insofar as it is necessary, the Findings of Fact contained in the Findings Order issued on March 19, 1998 are incorporated in this Order and are expressly adopted by this Order.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. Minn. Stat. §§ 363.071, subd. 7 requires that the Judge order a respondent who has engaged in unfair discriminatory practices to reimburse the Minnesota Department of Human Rights for “all appropriate litigation and hearing costs expended”. The appropriate litigation and hearing costs for this proceeding totals \$4,432.20.

2. Minn. Stat. § 363.071, subd. 2 requires that the Judge determine an appropriate civil penalty to the State when an owner of real property violates the provisions of the Human Rights Act. The Judge must take into account the seriousness and extent of the violation, the public harm occasioned by it, the financial resources of the Respondent, and whether the violation was intentional. The Judge has properly taken these matters into account. Because Respondent is no longer engaged in renting or leasing real property in Minnesota, awarding a nominal civil penalty of \$250.00 is appropriate as discussed in the Memorandum.

3. Respondent has failed to establish or demonstrate financial inability to pay the Civil penalty or the Department’s hearing and litigation costs.

4. Insofar as it is necessary, the Conclusions (except for the error with respect to the civil penalty) contained in the Findings Order are incorporated in this Order and are expressly adopted.

5. These Conclusions are also made for the reasons set forth in the attached Memorandum which is incorporated in and made a part of these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### ORDER

IT IS HEREBY ORDERED THAT:

1. This Order is the **final decision** in this case and expressly incorporates and adopts the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (except as indicated in ordering paragraph 4 below) issued on March 19, 1998 (“Findings Order”).

2. Respondent shall pay to the Minnesota Department of Human Rights \$4,432.20 as payment for litigation and hearing costs. The check should be made out to "Minnesota Department of Human Rights."

3. Ordering paragraph 4 of the Findings Order is hereby withdrawn, rescinded and replaced with Ordering paragraph 4 of this Order.

4. Within 30 days after issuance of this Order, Respondent shall pay a civil penalty to the Minnesota State Treasurer of \$250.00 for deposit in the General Fund of the State of Minnesota.

5. This Order is effective on the date it is signed by the Administrative Law Judge.

Dated this 18th day of June, 1998.

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ALLEN E. GILES  
Administrative Law Judge

Reported: Taped

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MEMORANDUM

Final Decision

The Court of Appeals has expressed a preference that decisions in Human Rights Act proceedings should combine liability and damage/financial issues before the issuance of a final decision. See, for example, Schelin v. PGI Companies, Inc., OAH Docket No. 3-1700-8948-2 (June 28, 1995), Court File No. \_\_\_\_\_. The Court of Appeals has suggested that a Human Rights Act appeal is not ripe for consideration unless findings and conclusions also address all the damage issues. Therefore, the final decision in this case is not being rendered until all the damage issues are determined.

### Civil Penalty Correction

- The Findings Order contains an error. Initially the Judge assumed that Respondent continued to be involved in the business of renting or leasing housing, a civil penalty of \$1,000.00 appeared appropriate to deter further discriminatory behavior. However, in the last Finding relating to the events giving rise to this case, the Judge found that Respondent was no longer engaged in the rental business in Minnesota. In the Memorandum of the Findings Order, the Judge discussed this issue and concluded that a nominal amount (\$250.00) for the civil penalty would be appropriate because Respondent was no longer in the rental business. However, this change was not made in other parts of the Order. Therefore, this error is being corrected.

### Financial Hardship Or Inability to Pay

- Minn. Stat. § 363.071, subd. 7 requires that the Judge order a respondent who has committed unfair discriminatory practices to reimburse the Department for litigation and hearing costs unless the payment would impose a financial hardship. Subdivision 7 provides in part as follows:

Subd. 7. **Litigation and hearing costs.** The administrative law judge shall order a respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the department and the attorney general for all appropriate litigation and hearing costs expended in preparing for and conducting the hearing, unless payment of the costs would impose a financial hardship on the respondent.

(Emphasis added)

The record of this proceeding was held open to give Respondent an opportunity to present evidence and argument regarding financial hardship or his inability to pay both the civil penalty and the Department's litigation and hearing costs. Respondent has made no effort to establish his inability to pay.

AEG